

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

MARK DEWAYNE PRICE,

Plaintiff,

v.

CIVIL ACTION NO. 2:08-00259

CORRECTIONAL MEDICAL
SERVICES, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's second motion to dismiss the complaint in this matter. (Doc. No. 22.) By Standing Order entered August 1, 2006, and filed in this case on April 17, 2008, this matter was referred to United States Magistrate Judge Mary E. Stanley. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge Stanley to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge Stanley submitted her Proposed Findings and Recommendation ("PF & R") on November 10, 2008, recommending that this court deny the motion to dismiss. (Doc. No. 44 at 3.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge Stanley's PF & R. Neither party filed objections to the magistrate judge's proposed

findings, and the failure to file objections within the appropriate time frame constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Having reviewed the Proposed Findings and Recommendation filed by Magistrate Judge Stanley, the court (1) **CONFIRMS AND ACCEPTS** the magistrate judge's findings (Doc. No. 44); and (2) **DENIES** defendant's second motion to dismiss (Doc. No. 22).

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record and to any unrepresented party.

It is **SO ORDERED** this 18th day of December, 2008.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
United States District Judge